

AMENDED IN ASSEMBLY APRIL 16, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 526

Introduced by Assembly Member Fuentes

February 25, 2009

An act to add and repeal Article 14 (commencing with Section 2340) of Chapter 5 of Division 2 of the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

AB 526, as amended, Fuentes. Public Protection and Physician Health Program Act of 2009.

Existing law establishes in the Department of Consumer Affairs the Substance Abuse Coordination Committee, comprised of the executive officers of the department's healing arts boards, as specified, and a designee of the State Department of Alcohol and Drug Programs. Existing law requires the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board shall use in dealing with substance-abusing licensees. The Medical Practice Act establishes in the Department of Consumer Affairs the Medical Board of California, which provides for the licensure and regulation of physicians and surgeons.

This bill would enact the Public Protection and Physician Health Program Act of 2009, which would, until January 1, 2021, establish within the State and Consumer Services Agency the Public Protection and Physician Health Committee, consisting of 14 members appointed by specified entities, and would require *the committee to be appointed*

and to hold its first meeting by March 1, 2010, and would require agency adoption of related rules and regulations by June 30, 2010. The bill would require the committee to recommend to the agency one or more physician health programs, and would authorize the agency to contract, *including on an interim basis, as specified*, with any qualified physician health program for purposes of care and rehabilitation of physicians and surgeons with alcohol or drug abuse or dependency problems or mental disorders as specified. The bill would impose requirements on the physician health program relating to, among other things, monitoring the status and compliance of physicians and surgeons who enter treatment for a qualifying illness, as defined, pursuant to written, voluntary agreements, and would require the agency and committee to monitor compliance with these requirements. The bill would provide that a voluntary agreement to receive treatment would not be subject to public disclosure or disclosure to the Medical Board of California, except as specified. The bill would ~~require~~ *authorize* the board to increase physician and surgeon licensure and renewal fees for purposes of the act, and would establish the Public Protection and Physician Health Program Trust Fund for deposit of those funds, which would be subject to appropriation by the Legislature. The bill would also require specified performance audits.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares that:
- 2 (a) California has long valued high quality medical care for its
- 3 citizens and, through its regulatory and enforcement system,
- 4 protects health care consumers through the proper licensing and
- 5 regulation of physicians and surgeons to promote access to quality
- 6 medical care. The protection of the public from harm by physicians
- 7 and surgeons who may be impaired by alcohol or substance abuse
- 8 or dependence or by a mental disorder is paramount.
- 9 (b) Nevertheless, physicians and surgeons experience
- 10 health-related problems at the same frequency as the general
- 11 population, and many competent physicians and surgeons with
- 12 illnesses may or may not immediately experience impairment in
- 13 their ability to serve the public. It has been estimated that at least
- 14 10 percent of the population struggles with alcohol or substance

1 abuse or dependence during their lifetime, which may, at some
2 point, impact approximately 12,500 of the state's 125,000 licensed
3 physicians and surgeons.

4 (c) It is in the best interests of the public and the medical
5 ~~profession to provide a pathway for any currently licensed~~
6 *profession to provide a pathway to recovery for any licensed*
7 physician and surgeon that is *currently* suffering from alcohol or
8 substance abuse or dependence or a mental disorder. The American
9 Medical Association has recognized that it is an expression of the
10 highest meaning of professionalism for organized medicine to take
11 an active role in helping physicians and surgeons to lead healthy
12 lives in order to help their patients, and therefore, it is appropriate
13 for physicians and surgeons to assist in funding such a program.

14 (d) While nearly every other state has a physician health
15 program, since 2007 California has been without any state program
16 that monitors physicians and surgeons who have independently
17 obtained, or should be encouraged to obtain, treatment for alcohol
18 or substance abuse or dependence or for a mental disorder, so that
19 they do not treat patients while impaired.

20 (e) It is essential for the public interest and the public health,
21 safety, and welfare to focus on early intervention, assessment,
22 referral to treatment, and monitoring of physicians and surgeons
23 with significant health impairments that may impact their ability
24 to practice safely. Such a program need not, and should not
25 necessarily, divert physicians and surgeons from the disciplinary
26 system, but instead focus on providing assistance before any harm
27 to a patient has occurred.

28 (f) Therefore, it is necessary to create a program in California
29 that will permit physicians and surgeons to obtain *referral to*
30 treatment and monitoring of alcohol or substance abuse or
31 dependence or a mental disorder, so that they do not treat patients
32 while impaired.

33 SEC. 2. Article 14 (commencing with Section 2340) is added
34 to Chapter 5 of Division 2 of the Business and Professions Code,
35 to read:

36
37 Article 14. Public Protection and Physician Health Program

38
39 2340. This article shall be known and may be cited as the Public
40 Protection and Physician Health Program Act of 2009.

2341. For purposes of this article, the following terms have the following meanings:

(a) “Agency” means the State and Consumer Services Agency.

(b) “Board” means the Medical Board of California.

(c) “Committee” means the Public Protection and Physician Health Committee established pursuant to Section 2342.

(d) “Impaired” or “impairment” means the inability to practice medicine with reasonable skill and safety to patients by reason of alcohol abuse, substance abuse, alcohol dependency, any other substance dependency, or a mental disorder.

(e) “Participant” means a physician and surgeon enrolled in the program pursuant to an agreement entered into as provided in Section 2345.

(f) “Physician health program” or “program” means the program for the prevention, detection, intervention, monitoring, and referral to treatment of impaired physicians and surgeons, and includes vendors, providers, or entities contracted with by the agency pursuant to this article.

(g) “Physician and surgeon” means a holder of a physician’s and surgeon’s certificate.

(h) “Qualifying illness” means “alcohol or substance abuse,” “alcohol or chemical dependency,” or a “mental disorder” as those terms are used in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) or subsequent editions.

(i) “Secretary” means the Secretary of State and Consumer Services.

(j) “Treatment program” or “treatment” means the delivery of care and rehabilitation services provided by an organization or persons authorized by law to provide those services.

2342. (a) (1) There is hereby established within the State and Consumer Services Agency the Public Protection and Physician Health Committee. *The committee shall be appointed and hold its first meeting no later than March 1, 2010.* The committee shall be comprised of 14 members who shall be appointed as follows:

(A) Eight members appointed by the secretary, including the following:

(i) Two members who are licensed mental health professionals with knowledge and expertise in the identification and treatment of substance abuse and mental disorders.

1 (ii) Six members who are physicians and surgeons with
2 knowledge and expertise in the identification and treatment of
3 alcohol dependence and substance abuse. One member shall be a
4 designated representative from a panel recommended by a nonprofit
5 professional association representing physicians and surgeons
6 licensed in this state with at least 25,000 members in all modes of
7 practice and specialties. The secretary shall fill one each of the
8 remaining appointments from among those individuals as may be
9 recommended by the California Society of Addiction Medicine,
10 the California Psychiatrist Association, and the California Hospital
11 Association.

12 (B) Four members of the public appointed by the Governor, at
13 least one of whom shall have experience in advocating on behalf
14 of consumers of medical care in this state.

15 (C) One member of the public appointed by the Speaker of the
16 Assembly.

17 (D) One member of the public appointed by the Senate
18 Committee on Rules.

19 (2) (A) For the purpose of this subdivision, a public member
20 may not be any of the following:

21 (i) A current or former physician and surgeon or an immediate
22 family member of a physician and surgeon.

23 (ii) Currently or formerly employed by a physician and surgeon
24 or business providing or arranging for physician and surgeon
25 services, or have any financial interest in the business of a licensee.

26 (iii) An employee or agent or representative of any organization
27 representing physicians and surgeons.

28 (B) Each public member shall meet all of the requirements for
29 public membership on the board as set forth in Chapter 6
30 (commencing with Section 450) of Division 1.

31 (b) Members of the committee shall serve without compensation,
32 but shall be reimbursed for any travel expenses necessary to
33 conduct committee business.

34 (c) Committee members shall serve terms of four years, and
35 may be reappointed. By lot, the committee shall stagger the terms
36 of the initial members appointed.

37 (d) The committee shall be subject to the Bagley-Keene Open
38 Meeting Act (Article 9 (commencing with Section 11120) of
39 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
40 Code), and shall prepare *any additional* recommended rules and

1 regulations necessary or advisable for the purpose of implementing
2 this article, subject to the Administrative Procedures Act (Chapter
3 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
4 Title 2 of the Government Code). The rules and regulations shall
5 include appropriate minimum standards and requirements for
6 referral to treatment, and monitoring of participants in the physician
7 health program, and shall be written in a manner that provides
8 clear guidance and measurable outcomes to ensure patient safety
9 and the health and wellness of physicians and surgeons. The agency
10 shall adopt regulations for the implementation of this article, taking
11 into consideration the regulations recommended by the committee.

12 (e) The rules and regulations required by this section shall be
13 adopted not later than June 30, 2010, and shall, at a minimum, be
14 consistent with the uniform standards adopted pursuant to Section
15 315, and shall include all of the following:

16 (1) Minimum standards, criteria, and guidelines for the
17 acceptance, denial, referral to treatment, and monitoring of
18 physicians and surgeons in the physician health program.

19 (2) Standards for requiring that a physician and surgeon agree
20 to cease practice to obtain appropriate treatment services.

21 (3) Criteria that must be met prior to a physician and surgeon
22 returning to practice.

23 (4) Standards, requirements, and procedures for random testing
24 for the use of banned substances and protocols to follow if that
25 use has occurred.

26 (5) Worksite monitoring requirements and standards.

27 (6) The manner, protocols, and timeliness of reports required
28 to be made pursuant to Section 2345.

29 (7) Appropriate requirements for clinical diagnostic evaluations
30 of program participants.

31 (8) Requirements for a physician and surgeon's termination
32 from, and reinstatement to, the program.

33 (9) Requirements that govern the ability of the program to
34 communicate with a participant's employer or organized medical
35 staff about the participant's status and condition.

36 (10) Group meeting and other self-help requirements, standards,
37 protocols, and qualifications.

38 (11) Minimum standards and qualifications of any vendor,
39 monitor, provider, or entity contracted with by the agency pursuant
40 to Section 2343.

1 (12) A requirement that all physician health program services
2 shall be available to all licensed physicians and surgeons with a
3 qualifying illness.

4 (13) A requirement that any physician health program shall do
5 all of the following:

6 (A) Promote, facilitate, or provide information that can be used
7 for the education of physicians and surgeons with respect to the
8 recognition and treatment of alcohol dependency, chemical
9 dependency, or mental disorders, and the availability of the
10 physician health program for qualifying illnesses.

11 (B) Offer assistance to any person in referring a physician and
12 surgeon for purposes of assessment or treatment, or both, for a
13 qualifying illness.

14 (C) Monitor the status during treatment of a physician and
15 surgeon who enters treatment for a qualifying illness pursuant to
16 a written, voluntary agreement.

17 (D) Monitor the compliance of a physician and surgeon who
18 enters into a written, voluntary agreement for a qualifying illness
19 with the physician health program setting forth a course of
20 recovery.

21 (E) Agree to accept referrals from the board to provide
22 monitoring services pursuant to a board order.

23 (F) Provide a clinical diagnostic evaluation of physicians and
24 surgeons entering the program.

25 (14) Rules and procedures to comply with auditing requirements
26 pursuant to Section 2348.

27 (15) A definition of the standard of “reasonably likely to be
28 detrimental to patient safety or the delivery of patient care,” relying,
29 to the extent practicable, on standards used by hospitals, medical
30 groups, and other employers of physicians and surgeons.

31 (16) Any other provision necessary for the implementation of
32 this article.

33 2343. (a) On and after July 1, 2010, upon adoption of the rules
34 and regulations required by Section 2342, the committee shall
35 recommend one or more physician health programs to the agency,
36 and the agency may contract with any qualified physician health
37 program. The physician health program shall be a nonprofit
38 corporation organized under Section 501(c)(3) of Title 26 of the
39 United States Code. The chief executive officer shall have expertise
40 in the areas of alcohol abuse, substance abuse, alcohol dependency,

1 other chemical dependencies, and mental disorders. *In order to*
2 *expedite the delivery of physician health program services*
3 *established by this article, the agency may contract with an entity*
4 *meeting the minimum standards and requirements set forth in*
5 *subdivision (e) of Section 2342 on an interim basis prior to the*
6 *adoption of any additional rules and regulations required to be*
7 *adopted pursuant to subdivision (d) of Section 2342. The agency*
8 *may extend the contract when the rules and regulations are*
9 *adopted, provided that the physician health program meets the*
10 *requirements in those rules and regulations.*

11 (b) Any contract entered into pursuant to this article shall comply
12 with all rules and regulations required to be adopted pursuant to
13 this article. No entity shall be eligible to provide the services of
14 the physician health program that does not meet the minimum
15 standards, criteria, and guidelines contained in those rules and
16 regulations.

17 (c) The contract entered into pursuant to this article shall also
18 require the contracting entity to do both of the following:

19 (1) Report annually to the committee statistics, including the
20 number of participants served, the number of compliant
21 participants, the number of participants who have successfully
22 completed their agreement period, and the number of participants
23 reported to the board for suspected noncompliance; provided,
24 however, that in making that report, the physician health program
25 shall not disclose any personally identifiable information relating
26 to any physician and surgeon participating in a voluntary agreement
27 as provided in this article.

28 (2) Agree to submit to periodic audits and inspections of all
29 operations, records, and management related to the physician health
30 program to ensure compliance with the requirements of this article
31 and its implementing rules and regulations.

32 (d) In addition to the requirements of Section 2348, the agency,
33 in conjunction with the committee, shall monitor compliance of
34 the physician health program with the requirements of this article
35 and its implementing regulations, including making periodic
36 inspections and onsite visits with any entity contracted to provide
37 physician health program services.

38 2344. The agency has the sole discretion to contract with a
39 physician health program for licensees of the board and no
40 provision of this article may be construed to entitle any physician

1 and surgeon to the creation or designation of a physician health
2 program for any individual qualifying illness or group of qualifying
3 illnesses.

4 2345. (a) In order to encourage voluntary participation in
5 monitored alcohol or chemical dependency or mental disorder
6 treatment programs, and in recognition of the fact that mental
7 disorders, alcohol dependency, and chemical dependency are
8 illnesses, a physician and surgeon, certified or otherwise lawfully
9 practicing in this state, may enter into a voluntary agreement with
10 a physician health program. The agreement between the physician
11 and surgeon and the physician health program shall include a
12 jointly agreed upon treatment program and mandatory conditions
13 and procedures to monitor compliance with the treatment program,
14 including, but not limited to, an agreement to cease practice, as
15 defined by the rules and regulations adopted pursuant to Section
16 2342. Except as provided in subdivisions (b), (c), (d), and (e), a
17 physician and surgeon's participation in the physician health
18 program pursuant to a voluntary agreement shall be confidential
19 unless waived by the physician and surgeon.

20 (b) (1) Any voluntary agreement entered into pursuant to this
21 section shall not be considered a disciplinary action or order by
22 the board, shall not be disclosed to the board, and shall not be
23 public information if all of the following are true:

24 (A) The voluntary agreement is the result of the physician and
25 surgeon self-enrolling or voluntarily participating in the physician
26 health program.

27 (B) The board has not referred a complaint against the physician
28 and surgeon to a district office of the board for ~~simultaneous~~
29 ~~investigation jointly assigned to an investigator and to the deputy~~
30 ~~attorney general in the Health Quality Enforcement Section~~
31 ~~pursuant to Section 12529.6 of the Government Code for conduct~~
32 *investigation for conduct* involving or alleging an impairment
33 adversely affecting the care and treatment of patients.

34 (C) The physician and surgeon is in compliance with the
35 treatment program and the conditions and procedures to monitor
36 compliance.

37 (2) (A) Each participant, prior to entering into the voluntary
38 agreement described in paragraph (1), shall disclose to the
39 committee whether he or she is under investigation by the board.
40 If a participant fails to disclose such an investigation, upon

1 enrollment or at any time while a participant, the participant shall
2 be terminated from the program. For those purposes, the committee
3 ~~shall periodically request from the board copies of recent~~ *shall*
4 *regularly monitor recent* accusations filed against physicians and
5 surgeons and shall compare the names of physicians and surgeons
6 subject to accusation with the names of program participants.

7 (B) Notwithstanding subparagraph (A), a participant who is
8 under investigation by the board and who makes the disclosure
9 required in subparagraph (A) may participate in, and enter into a
10 voluntary agreement with, the physician health program.

11 (c) (1) If a physician and surgeon enters into a voluntary
12 agreement with the physician health program pursuant to this
13 article, the physician health program shall do both of the following:

14 (A) In addition to complying with any other duty imposed by
15 law, report to the committee the name of and results of any contact
16 or information received regarding a physician and surgeon who is
17 suspected of being, or is, impaired and, as a result, whose
18 competence or professional conduct is reasonably likely to be
19 detrimental to patient safety or to the delivery of patient care.

20 (B) Report to the committee if the physician and surgeon fails
21 to cooperate with any of the requirements of the physician health
22 program, fails to cease practice when required, fails to submit to
23 evaluation, treatment, or biological fluid testing when required, or
24 whose impairment is not substantially alleviated through treatment,
25 or who, in the opinion of the physician health program, is unable
26 to practice medicine with reasonable skill and safety, *or who*
27 *withdraws or is terminated from the physician health program*
28 *prior to completion.*

29 (2) Within 48 hours of receiving a report pursuant to paragraph
30 (1), the committee shall make a determination as to whether the
31 competence or professional conduct of the physician and surgeon
32 is reasonably likely to be detrimental to patient safety or to the
33 delivery of patient care, and, if so, refer the matter to the board
34 consistent with rules and regulations adopted by the agency. Upon
35 receiving a referral pursuant to this paragraph, the board shall take
36 immediate action and may initiate proceedings to seek a temporary
37 restraining order or interim suspension order as provided in this
38 division.

39 (d) Except as provided in subdivisions (b), (c), and (e), and this
40 subdivision, any oral or written information reported to the board

1 pursuant to this section, including, but not limited to, any physician
2 and surgeon's participation in the physician health program and
3 any voluntary agreement entered into pursuant to this article, shall
4 remain confidential as provided in subdivision (c) of Section 800,
5 and shall not constitute a waiver of any existing evidentiary
6 privileges under any other provision or rule of law. However, this
7 subdivision shall not apply if the board has referred a complaint
8 against the physician and surgeon to a district office of the board
9 ~~for simultaneous investigation jointly assigned to an investigator~~
10 ~~and to the deputy attorney general in the Health Quality~~
11 ~~Enforcement Section pursuant to Section 12529.6 of the~~
12 ~~Government Code for conduct involving or alleging an impairment~~
13 ~~for investigation for conduct involving or alleging an impairment~~
14 adversely affecting the care and treatment of patients.

15 (e) Nothing in this section prohibits, requires, or otherwise
16 affects the discovery or admissibility of evidence in an action
17 against a physician and surgeon based on acts or omissions within
18 the course and scope of his or her practice.

19 (f) Any information received, developed, or maintained by the
20 agency regarding a physician and surgeon in the program shall not
21 be used for any other purpose.

22 2346. The committee shall report to the agency statistics
23 received from the physician health program pursuant to Section
24 2343, and the agency shall, thereafter, report to the Legislature the
25 number of individuals served, the number of compliant individuals,
26 the number of individuals who have successfully completed their
27 agreement period, and the number of individuals reported to the
28 board for suspected noncompliance; provided, however, that in
29 making that report the agency shall not disclose any personally
30 identifiable information relating to any physician and surgeon
31 participating in a voluntary agreement as provided herein.

32 2347. (a) A physician and surgeon participating in a voluntary
33 agreement shall be responsible for all expenses relating to chemical
34 or biological fluid testing, treatment, and recovery as provided in
35 the written agreement between the physician and surgeon and the
36 physician health program.

37 (b) In addition to the fees charged for the initial issuance or
38 biennial renewal of a physician and surgeon's certificate pursuant
39 to Section 2435, and at the time those fees are charged, the board
40 ~~shall~~ *may* include a surcharge of not less than twenty-two dollars

1 (\$22) and not to exceed an amount equal to 2.5 percent of the fee
2 set pursuant to Section 2435, which shall be expended solely for
3 the purposes of this article. ~~The~~ *If the board includes a surcharge,*
4 *the* board shall collect this surcharge and cause it to be transferred
5 monthly to the trust fund established pursuant to subdivision (c).
6 This amount shall be separately identified on the fee statement
7 provided to physicians and surgeons as being imposed pursuant
8 to this article. The board may include a conspicuous statement
9 indicating that the Public Protection and Physician Health Program
10 is not a program of the board and the collection of this fee does
11 not, nor shall it be construed to, constitute the board's endorsement
12 of, support for, control of, or affiliation with, the program.

13 (c) There is hereby established in the State Treasury the Public
14 Protection and Physician Health Program Trust Fund into which
15 all funds collected pursuant to this section shall be deposited. These
16 funds shall be used, upon appropriation in the annual Budget Act,
17 only for the purposes of this article.

18 (d) Nothing in this section is intended to limit the amount of
19 funding that may be provided for the purposes of this article. In
20 addition to funds appropriated in the annual Budget Act, additional
21 funding from private or other sources may be used to ensure that
22 no person is denied access to the services established by this
23 program due to a lack of available funding.

24 (e) All costs of the committee and program established pursuant
25 to this article shall be paid out of the funds collected pursuant to
26 this section.

27 2348. (a) The agency shall biennially contract to perform a
28 thorough audit of the effectiveness, efficiency, and overall
29 performance of the program and its vendors. The agency may
30 contract with a third party to conduct the performance audit, except
31 the third party may not be a person or entity that regularly testifies
32 before the board. This section is not intended to reduce the number
33 of audits the agency or board may otherwise conduct.

34 (b) The audit shall make recommendations regarding the
35 continuation of this program and this article and shall suggest any
36 changes or reforms required to ensure that individuals participating
37 in the program are appropriately monitored and the public is
38 protected from physicians and surgeons who are impaired due to
39 alcohol or drug abuse or dependency or mental disorder. Any
40 person conducting the audit required by this section shall maintain

1 the confidentiality of all records reviewed and information obtained
2 in the course of conducting the audit and shall not disclose any
3 information that is identifiable to any program participant.

4 (c) If, during the course of an audit, the auditor discovers that
5 a participant has harmed a patient, or a patient has died while being
6 treated by a participant, the auditor shall include that information
7 in his or her audit, and shall investigate and report on how that
8 participant was dealt with by the program.

9 (d) A copy of the audit shall be made available to the public by
10 posting a link to the audit on the agency's Internet Web site
11 homepage no less than 10 business days after publication of the
12 audit. Copies of the audit shall also be provided to the Assembly
13 and Senate Committees on Business and Professions and the
14 Assembly and Senate Committees on Health within 10 business
15 days of its publication.

16 2349. This article shall remain in effect only until January 1,
17 2021, and as of that date is repealed, unless a later enacted statute,
18 that is enacted before January 1, 2021, deletes or extends that date.